HOUSE BILL NO. 1736

AN ACT TO BE KNOWN AS THE "PRIVATE FUNDING FOR EDUCATIONAL ASSISTANCE ACT"; TO DECLARE CERTAIN LEGISLATIVE FINDINGS AND TO DEFINE CERTAIN TERMS USED IN THE ACT; TO PROVIDE FOR AN INCOME TAX CREDIT FOR TAXPAYERS WHO MAKE CONTRIBUTIONS TO NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATIONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This act shall be known and may be cited as the "Private Funding for Educational Assistance Act."

SECTION 2. The Legislature finds and declares the following:

(a) The individual development of young people is critical to their future success and that of this state.

(b) Each child is unique and learns differently from other children, and many children are likely to benefit from expanded educational opportunities.

(c) The dropout rate concerns this state, and it is in the interest of all citizens of this state to take steps to reduce the dropout rate and to assist those who have dropped out.

(d) A credit against state taxes for contributions to nonprofit educational assistance organizations authorized by this act will expand the educational opportunities available to children of families that have limited financial resources, especially at-risk students, and will increase the academic achievements of the children of this state.

(e) This state has recognized the value of choice in education and acknowledges that privately funded scholarships can and do serve the public interest.
(f) The funding in this act is in accordance with case law and precedent and is considered to be private, voluntary, nongovernmental funding.

(g) The state goal to provide more resources toward education requires creative and innovative solutions that can involve the private sector.

(h) With respect to a nonpublic school, nothing in this act shall be construed to give any governmental entity authority to regulate, control, supervise or otherwise be involved in:

(i) The form, manner or content of instruction, ministry, teaching or curriculum offered by the nonpublic school;

(ii) The ability of the nonpublic school to select and supervise qualified personnel and otherwise control the terms of employment, including the right to employ only those individuals who share the religious views of the school;

(iii) The internal discipline, self-governance and autonomy of the nonpublic school; or

(iv) The religious environment of the nonpublic school, such as symbols, art, icons and scripture.

(i) Individuals who not only pay their own taxes for the support of the public schools, but also relieve the state and its school districts of the necessity of assessing, collecting and expending additional taxes by making voluntary contributions to school tuition organizations should receive at least a partial credit against their income taxes on account of those contributions.

(j) The providing of assistance by a nonprofit educational assistance organization shall not be construed to be a public appropriation, or the providing of public financing assistance to any school.

SECTION 3. The following words and phrases, when used in this act, have the meanings ascribed in this section unless the context clearly indicates otherwise:
(a) "Nonprofit educational assistance organization" means a charitable organization that:

(i) Is located in this state;

(ii) Is exempt from federal income taxes pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

(iii) Allocates its annual revenues for student scholarships, educational assistance and marketing and administrative expenses and meets the following conditions:

1. At least fifty percent (50%) of all qualifying contributions the organization receives during any given state fiscal year must be for the purpose of providing scholarships to any qualifying student who attends a school, and the organization must demonstrate a pattern of giving priority in awarding scholarships to those students who demonstrate the greatest need for the scholarships. Any qualifying contributions not required to be allocated in accordance with this subparagraph may be used to provide scholarships for nonqualifying students who attend schools or may be used for the purposes set forth in subparagraph 3;

2. The organization does not provide any scholarship to a student for a single school year that exceeds ninety percent (90%) of the state's share of the minimum education program for all school districts divided by the average daily attendance for all school districts in this state for the school year in which the scholarship is awarded, except that the organization may award scholarships to children with disabilities in any amount that does not exceed two hundred percent (200%) of the state's share of the minimum education program for all school districts divided by the average daily attendance for all school districts in this state for the school year in which the scholarship is awarded, and except that scholarships may be awarded in amounts in excess of the limitation if the increased
amount of a scholarship is offset by a reduction in the monetary
amount of the scholarships provided by the organization to
nonqualifying students; and

3. An organization may allocate up to fifty
percent (50%) of any qualifying contributions it receives during
any given state fiscal year which are not required to be allocated
under subparagraph 1 to directly assist any student who attends a
public school in defraying the costs of private instructional
assistance or public school scholarships, including any related
private educational supplies and materials and transportation to
and from any school to the extent that such transportation is not
paid for by a school district or the state, offsetting student
fees, after-school programs, scholarship assistance for dropouts
and grants for public school programs and for marketing and
administrative expenses.

The term "nonprofit educational assistance organization" does
not include an organization that only provides scholarships to
students of a particular school.

(b) "Qualifying contribution" includes a donation of
money but does not include a payment for tuition, activity fees or
other educational expenses of the taxpayer making the payment, a
spouse or dependent of the taxpayer or any individual student
identified by name by the taxpayer as the intended beneficiary of
the payment.

(c) "Qualifying student" means a student who was
counted as a pupil in average daily attendance during the previous
state fiscal year for purposes of state per pupil funding
obligations or who has received a scholarship from the nonprofit
educational assistance organization during any previous state
fiscal year. The term includes all kindergarten students. The
term does not include a student who is counted in average daily
attendance for the state fiscal year in which the nonprofit
educational assistance organization is providing a scholarship.
(d) "School" means a public or nonpublic elementary or secondary school located within this state at which a student may fulfill the requirements of the Mississippi Compulsory School Attendance Law (Section 37-13-91).

SECTION 4. (1) For any tax year commencing on or after January 1, 2002, there shall be allowed to any taxpayer that makes a qualifying contribution to a nonprofit educational assistance organization a credit against the tax imposed by this chapter in an amount equal to fifty percent (50%) of the aggregate amount of the taxpayer's contributions made during the income tax year for which the credit is claimed.

(2) A taxpayer is entitled to the credit allowed under this section only if:

(a) The contribution is made by the taxpayer under the restriction that it shall be used only for the purposes authorized by this act; and

(b) the taxpayer does not designate a specific student as the beneficiary of the contribution.

(3) A tax credit under this section may be carried forward for a period of five (5) years.

SECTION 5. A nonprofit educational assistance organization that receives a contribution shall provide a receipt to the taxpayer making the contribution. The receipt must include the name of the nonprofit educational assistance organization, the name of the taxpayer, the amount of the contribution and any additional information required by the State Tax Commission.

SECTION 6. The freedom of religion of all persons is inviolate, and this act may not be construed to authorize governmental involvement in or entanglement with the religious instruction or other operations of a nonpublic school.

SECTION 7. The State Tax Commission may promulgate rules and regulations to administer and enforce this act.
SECTION 8. The provisions of this act are severable, except that if any provision of Section 3(a)(iii)1 is found to be unconstitutional, then Section 3(a)(iii)3 shall be null and void.

SECTION 9. Sections 1 through 8 of this act shall be codified as separate consecutive sections in Chapter 7, Title 27, Mississippi Code of 1972.

SECTION 10. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

SECTION 11. This act shall take effect and be in force from and after January 1, 2002.